

Message Text

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ACTION EB-11

INFO OCT-01 ARA-16 EUR-25 NEA-14 IO-14 ISO-00 AF-10 EA-11

RSC-01 FRB-03 OMB-01 TAR-02 SP-03 SWF-02 AGR-20

AID-20 CIAE-00 COME-00 INR-11 LAB-06 NSAE-00 OIC-04

SIL-01 STR-08 TRSE-00 CIEP-03 CEA-02 SSO-00 NSCE-00

SS-20 NSC-07 L-03 INRE-00 FEA-02 SCI-06 DRC-01 EPA-04

/232 W

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O R 051954Z SEP 74

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 8057

INFO USUN NEW YORK 995

USMISSION OECD PARIS

AMEMBASSY NEW DELHI PRIORITY

AMEMBASSY MEXICO

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E.O. 11652: N/A

TAGS: EGEN UNCTAD

SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES

1. CONTACT GROUP HAS CREATED DRAFTING GROUP TO WORK
ON THE BRILLANTES TEXT, WITH THE FOLLOWING RESULTS:
A) GENERAL AGREEMENT ON FIRST SENTENCE THAT EVERY
STATE HAS PERMANENT SOVEREIGNTY OVER ITS NATURAL WEALTH
AND RESOURCES, ETC. EXCHANGE OCCURRED OVER WHETHER
SOVEREIGNTY IS OVER NATURAL WEALTH AND RESOURCES, OR
OVER WEALTH AND NATURAL AND NATURAL RESOURCES, WITH CASTANEDA
(MEXICO), CHADHA(INDIA) AND SUKIJASOVIC (YUGOSLAVIA)
PRESSING FOR LATTER. WE RESISTED, WITH RESULT OF
EVENTUAL AGREEMENT ON "NATURAL WEALTH".
B) THE LISTING OF SPECIFIC RIGHTS IS SPLIT OUT INTO
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A NEW PARAGRAPH (2 OF ARTICLE 2) BEGINNING "EACH STATE

HAS THE RIGHT";.

C) NO AGREEMENT ON SUBPARAS (A) AND (B), INDIAN DEL (CHADHA) MAINTAINING THAT SUBSTANCE OF PARA (B) ON INVESTMENT AGREEMENTS WOULD BE COVERED IN FINAL SENTENCE. USDEL MADE CLEAR INCLUSION OF SUBPARA (B) IS SINE QUA NON. RE SUBPARA (A), CHADHA PRESSED SUBSTITUTION OF "EVERY STATE HAS THE RIGHT TO REGULATE AND CONTROL FOREIGN INVESTMENT WITHIN ITS NATIONAL JURISDICTION IN ACCORDANCE WITH ITS LAWS AND REGULATIONS AND IN CONFORMITY WITH ITS DEVELOPMENT OBJECTIVES AND PRIORITIES", THIS BEING A TEXT THAT WAS DEBATED IN MEXICO. WE SAID THAT WE COULD NOT ACCEPT "CONTROL" BUT OTHERWISE SAW NO SUBSTANTIVE PROBLEM.

D) PROVISIONAL AGREEMENT REACHED ON PARA (C) (REGULATION OF MULTINATIONAL CORPORATIONS, WITH FOLLOWING LAST SENTENCE: "EVERY STATE SHOULD, WITH FULL REGARD FOR ITS SOVEREIGN RIGHTS, COOPERATE WITH OTHER STATES IN THE EXERCISE OF THE RIGHT SET FORTH IN THIS SUBPARAGRAPH". DEL RECOMMENDS ACCEPTANCE OF THIS LANGUAGE, WHICH IS IN SUBSTANCE THE SAME AS THAT OF THE PERTINENT SENTENCE OF THE BRILLANTES TEXT. USDEL MADE CLEAR THAT ITS PROVISIONAL AGREEMENT ON THIS AND ALL OTHER ELEMENTS OF BRILLANTES TEXT CONDITIONED ON ACCEPTABILITY OF WHOLE OF ARTICLE.

(E) ON COMPENSATION SUBPARA., CANADA HAS SUGGESTED "EQUITABLE" IN PLACE OF "JUST", AND MEXICO (CASTANEDA) HAS PROPOSED "APPROPRIATE AND ADEQUATE" IN PLACE OF "JUST". (COMMENT: THIS IS ANOTHER EXAMPLE OF CASTANEDA'S FAILING TO STAND BY TERMS OF MAW-RABASA AGREEMENT). DEL WOULD APPRECIATE WASHINGTON'S IMMEDIATE VIEWS ON THESE PROPOSALS; MEANWHILE, USDEL WILL CONTINUE TO INSIST ON "JUST." SALTER (EC) INFORMED USDEL THAT EC IS SPLIT, SOME BEING PREPARED TO ACCEPT "EQUITABLE;" OTHERS INSISTING ON "JUST". INDIA, AS REPORTED REFTTEL, HAS INSISTED THAT COMPENSATION BE GOVERNED SOLELY BY DOMESTIC LAW, WHICH WE HAVE DESCRIBED AS ABSOLUTELY NON-NEGOTIABLE.

F) NO AGREEMENT ON DISPUTE SETTLEMENT PARAGRAPHS, WITH INDIA WISHING TO MERGE PARA (D) AND (E) SO THAT AFTER RECOURSE TO DOMESTIC JURISDICTION, DISPUTES CONCERNING COMPENSATION ONLY WOULD BE SETTLED IN ACCORDANCE LIMITED OFFICIAL USE

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WITH PEACEFUL MEANS AGREED TO BY THE STATES (NOT PARTIES) CONCERNED. US DEL HAS POINTED OUT THAT DISPUTES MAY INVOLVE MATTERS OTHER THAN COMPENSATION AND THAT THIS PROPOSAL EXCLUDES GOVT-INVESTOR SETTLEMENT BY ARBITRATION. (G) IN CONTACT GROUP INDIA PROPOSED GENERAL REFERENCE TO UNCTAD CHARTER PRINCIPLES FOR LAST SENTENCE OF BRILLANTES FORMULA VIZ: "ALL STATES SHALL COOPERATE IN THE EXERCISE OF THESE RIGHTS WITH FULL REGARD TO THE PRINCIPLES

MENTIONED IN CHAPTER I". USDEL REJECTED DRAFTING GROUP,
MEETING LATER, EXAMINED BUT DID NOT ACCEPT FOLLOWING FORMULA
ON WHICH WE
WOULD APPRECIATE WASHINGTON'S IMMEDIATE VIEWS: "IN
RESPECT OF THE FOREGOING RIGHTS, ALL STATES CONCERNED
SHALL OBSERVE THE PRINCIPLES SET FORTH IN CHAPTER I,
IN PARTICULAR (INCLUDING) FULLFILLMENT IN GOOD FAITH OF
INTERNATIONAL OBLIGATIONS." INDIA IN CHALLENGING THIS DRAFT
MAINTAINS THAT THE
EXERCISE OF THE RIGHTS BE CONDITIONED NOT ON FULFILLMENT
OF INTERNATIONAL OBLIGATIONS, BUT ON FULFILLMENT OF
INTERNATIONAL COMMITMENTS FREELY ENTERED INTO, AND/OR
THAT ALL OTHER PRINCIPLES OF CHAPTER I RECEIVE EQUAL
MENTION IF INTERNATIONAL OBLIGATIONS ARE REFERRED TO.

2. ENVIRONMENT: DEPT WILL RECALL THAT USDEL AT MEXICO

PRESSED FOR THE FOLLOWING LANGUAGE AS AN ALTERNATIVE TEXT
IN THE PARA ON ENVIRONMENT: "ALL STATES HAVE, IN ACCORDANCE
WITH THE CHARTER OF THE UNITED NATIONS AND THE
PRINCIPLES OF INTERNATIONAL LAW, THE RESPONSIBILITY TO
ENSURE THAT ACTIVITIES WITHIN THEIR JURISDICTION OR
CONTROL DO NOT CAUSE DAMAGE TO THE ENVIRONMENT OF OTHER
STATES OR OF AREAS BEYOND THE LIMITS OF NATIONAL
JURISDICTION..." THE REFERENCES TO THE CHARTER AND
INTERNATIONAL LAW ARE FROM THE STOCKHOLM DECLARATION,
AND ARE USEFUL. HOWEVER, THIS IS AN ISSUE ON WHICH WE
STAND VERY MUCH ALONE, AS ALL OTHER DELS HAVE
ACCEPTED AN ALTERNATIVE WITHOUT THESE REFERENCES,
E.G. THE UK, WHICH PREFERS OUR AMENDMENT, HAS INSTRUCTIONS
PERMITTING IT TO ACCEPT DELETION OF
THESE REFERENCES. CAN WASHINGTON ACCEPT: "ALL
STATES, IN ACCORDANCE WITH PERTINENT INTERNATIONAL
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NORMS AND REGULATIONS, HAVE THE RESPONSIBILITY TO
ENSURE....," ETC? THIS OPENING IS INFORMALLY SUPPORTED
BY BRAZIL AND ARGENTINA. WE BELIEVE THIS FORMULATION
SHOULD BRING PERTINENT RULES ABOUT LIABILITY INTO PLAY.
DALE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ECONOMIC COOPERATION, AGREEMENT DRAFT, TEXT
Control Number: n/a
Copy: SINGLE
Draft Date: 05 SEP 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: shawdg
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974GENEVA05598
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740246-0885
From: GENEVA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740973/aaaacjwm.tel
Line Count: 159
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: shawdg
Review Comment: n/a
Review Content Flags:
Review Date: 24 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 APR 2002 by rowelle0>; APPROVED <04 MAR 2003 by shawdg>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CHARTER OF ECONOMIC RIGHTS AND DUTIES OF STATES
TAGS: EGEN, UNCTAD
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005